

[First Reprint]

SENATE, No. 2304

STATE OF NEW JERSEY
212th LEGISLATURE

INTRODUCED NOVEMBER 13, 2006

Sponsored by:

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District 21 (Essex, Morris, Somerset and Union)

Senator JOSEPH F. VITALE

District 19 (Middlesex)

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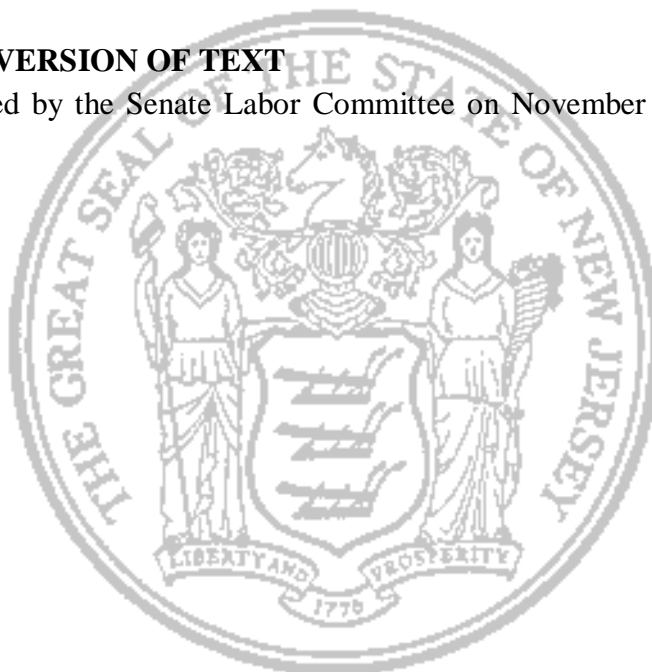
Senators Bucco, Karcher and Turner

SYNOPSIS

Provides certain employment protections for employees on military leave in time of war or emergency.

CURRENT VERSION OF TEXT

As reported by the Senate Labor Committee on November 29, 2007, with amendments.



(Sponsorship Updated As Of: 12/11/2007)

1 AN ACT concerning certain employment protections for employees
2 on military leave in time of war or emergency and amending
3 P.L.1941, c.119, P.L.1979, c.317 and N.J.S.11A:8-1.
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. Section 1 of P.L.1941, c.119 (C.38:23-4) is amended to read
9 as follows:

10 1. Every person holding office, position or employment, other
11 than for a fixed term or period, under the government of this State
12 or of any county, municipality, school district or other political
13 subdivision of this State, or of any board, body, agency or
14 commission of this State or any county, municipality or school
15 district thereof, who after July first, one thousand nine hundred and
16 forty, has entered, or hereafter shall enter, the active military or
17 naval service of the United States or of this State, in time of war or
18 an emergency, or for or during any period of training, or pursuant to
19 or in connection with the operation of any system of selective
20 service, or who, after July first, one thousand nine hundred and
21 forty, has entered or hereafter, in time of war, shall enter the active
22 service of the United States Merchant Marine, or the active service
23 of the Women's Army Auxiliary Corps, the Women's Reserve of the
24 Naval Reserve or any similar organization authorized by the United
25 States to serve with the Army or Navy, shall be granted leave of
26 absence for the period of such service and for a further period of
27 three months after receiving his discharge from such service. If
28 any such person shall be incapacitated by wound or sickness at the
29 time of his discharge from such service, his leave of absence shall
30 be extended until three months after his recovery from such wound
31 or sickness, or until the expiration of two years from the date of his
32 discharge from such service, whichever shall first occur.

33 In no case shall such person be discharged or separated from his
34 office, position or employment during such period of leave of
35 absence because of his entry into such service, or because of
36 reasons of economy or efficiency or other related reason if entry
37 into active military service in the Armed Forces of the United States
38 was in time of war or an emergency. During the period of such
39 leave of absence such person shall be entitled to all the rights,
40 privileges and benefits that he would have had or acquired if he had
41 actually served in such office, position or employment during such
42 period of leave of absence except, unless otherwise provided by
43 law, the right to compensation. Such leave of absence may be
44 granted with or without pay as provided by law. Such person shall
45 be entitled to resume the office, position or employment held by

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SLA committee amendments adopted November 29, 2007.

1 him at the time of his entrance into such service, provided he shall
2 apply therefor before the expiration of his said leave of absence. If
3 the employer's circumstances have so changed for reasons of
4 economy or efficiency or other related reason as to make it
5 impossible or unreasonable for such person who entered service in
6 time of war or other emergency to resume the office, position or
7 employment held prior to entrance into such service, the employer
8 shall restore such person to a position of like seniority, status and
9 pay, or any position available, if requested by such person, for
10 which the person is able or qualified to perform the duties. Upon
11 resumption of his office, position or employment, the service in
12 such office, position or employment of the person temporarily
13 filling the same shall immediately cease. No person who, after
14 entry into such service, shall have been separated from any such
15 service by a dishonorable discharge shall be entitled to any of the
16 rights, privileges or benefits herein conferred.

17 (cf: P.L.1942, c.327, s.2)

18
19 2. Section 20 of P.L.1979, c.317 (C.38:23C-20) is amended to
20 read as follows:

21 20. a. In the case of any person who, in order to perform military
22 service, has left or leaves a position, other than a temporary
23 position, in the employ of any employer, and who:

24 (1) Receives a certificate of completion of military service duly
25 executed by an officer of the applicable force of the Armed Forces
26 of the United States or by an officer of the applicable force of the
27 organized militia;

28 (2) Is still qualified to perform the duties of such position; and

29 (3) Makes application for reemployment within 90 days after he
30 is relieved from such service, if such position was in the employ of
31 a private employer, such employer shall restore such person to such
32 position, or to a position of like seniority, status and pay, unless the
33 employer's circumstances have so changed as to make it impossible
34 or unreasonable to do so.

35 If the circumstances of an employer have so changed because of
36 reasons of economy or efficiency or other related reason as to make
37 it impossible or unreasonable to restore a person who left to enter
38 active military service in the Armed Forces of the United States in
39 time of war or emergency, such employer shall restore such person
40 to any available position, if requested by such person, for which the
41 person is able or qualified to perform the duties.

42 b. The benefits, rights and privileges granted to persons in the
43 military service by this section shall be extended to and be
44 applicable to any person who, in order to participate in assemblies
45 or annual training or in order to attend service schools conducted by
46 the Armed Forces of the United States for a period or periods up to
47 and including three months, temporarily leaves or has left his
48 position, other than a temporary position, in the employ of any

1 employer and who, being qualified to perform the duties of such
2 position, makes application for reemployment within 10 days after
3 completion of such temporary period of service; provided that no
4 such person shall be entitled to the said benefits, rights and
5 privileges for such attendance at any service school or schools
6 exceeding a total of three months during any four-year period.

7 c. The benefits, rights and privileges granted to persons in the
8 military service by this section shall be extended to and be
9 applicable to any person who is or becomes a member of the
10 organized militia or of a reserve component of the Armed Forces of
11 the United States and who, because of such membership is
12 discharged by his employer or whose employment is suspended by
13 his employer because of such membership and who, being qualified
14 to perform the duties of such position, makes application for
15 reemployment or termination of the period of his suspension within
16 10 days after such discharge or suspension.

17 d. Any person who is restored to a position in accordance with
18 the provision of this section shall be considered as having been on
19 furlough or leave of absence during his period of military service,
20 temporary service under paragraph b. hereof, or of discharge or
21 suspension under paragraph c. hereof, shall be so restored without
22 loss of seniority, shall be entitled to participate in insurance or other
23 benefits offered by the employer pursuant to established rules and
24 practices relating to employees on furlough or leave of absence in
25 effect with the employer at the time such person entered the
26 military service or commenced such temporary service or was so
27 discharged or suspended and shall not be discharged from such
28 position without cause, within one year after such restoration.

29 e. In case any private employer fails or refuses to comply with
30 the provisions of this section the Superior Court shall have the
31 power, upon the filing of a complaint, by the person entitled to the
32 benefits of such provisions, to specifically require such employer to
33 comply with such provisions, and may, as an incident thereto,
34 compensate such person for any loss of wages or benefits suffered
35 by reason of such employer's unlawful action. The court shall order
36 a speedy hearing in any such case, and shall advance it on the
37 calendar. Any person claiming to be entitled to the benefits of the
38 provisions of this section may appear and be represented by
39 counsel, or, upon application to the Attorney General of the State,
40 may request that the Attorney General appear and act on his behalf.
41 If the Attorney General is reasonably satisfied that the person so
42 applying is entitled to such benefits, he shall appear and act as
43 attorney for such person in the amicable adjustment of the claim, or
44 in the filing of any complaint and the prosecution thereof. In the
45 hearing and determination of such applications under this section,
46 no fees or court costs shall be assessed against a person so applying
47 for such benefits.

48 (cf: P.L.1991, c.91, s.368)

1 3. N.J.S.11A:8-1 is amended to read as follows:

2 11A:8-1. a. A permanent employee may be laid off for economy,
3 efficiency or other related reason. A permanent employee shall
4 receive 45 days' written notice, unless in State government a greater
5 time period is ordered by the commissioner, which shall be served
6 personally or by certified mail, of impending layoff or demotion
7 and the reasons therefor. The notice shall expire 120 days after
8 service unless extended by the commissioner for good cause. At the
9 same time the notice is served, the appointing authority shall
10 provide the commissioner with a list of the names and permanent
11 titles of all employees receiving the notice. The board shall adopt
12 rules to implement employee layoff rights consistent with the
13 provisions of this section, upon recommendation by the
14 commissioner. The commissioner shall consult with the advisory
15 board representing labor organizations prior to such
16 recommendations.

17 b. Permanent employees in the service of the State or a
18 political subdivision shall be laid off in inverse order of seniority.
19 As used in this subsection, "seniority" means the length of
20 continuous permanent service in the jurisdiction, regardless of title
21 held during the period of service, except that for police and
22 firefighting titles, "seniority" means the length of continuous
23 permanent service only in the current permanent title and any other
24 title that has lateral or demotional rights to the current permanent
25 title. Seniority for all titles shall be based on the total length of
26 calendar years, months and days in continuous permanent service
27 regardless of the length of the employee's work week, work year or
28 part-time status.

29 c. For purposes of State service, a "layoff unit" means a
30 department or autonomous agency and includes all programs
31 administered by that department or agency. For purposes of
32 political subdivision service, the "layoff unit" means a department
33 in a county or municipality, an entire autonomous agency, or an
34 entire school district, except that the commissioner may establish
35 broader layoff units.

36 d. For purposes of State service, "job location" means a county.
37 The commissioner shall assign a job location to every facility and
38 office within a State department or autonomous agency. For
39 purposes of local service, "job location" means the entire political
40 subdivision and includes any facility operated by the political
41 subdivision outside its geographic borders.

42 e. For purposes of determining lateral title rights in State and
43 political subdivision service, title comparability shall be determined
44 by the department based upon whether the: (1) titles have
45 substantially similar duties and responsibilities; (2) education and
46 experience requirements for the titles are identical or similar; (3)
47 employees in an affected title, with minimal training and
48 orientation, could perform the duties of the designated title by

1 virtue of having qualified for the affected title; and (4) special
2 skills, licenses, certifications or registration requirements for the
3 designated title are similar and do not exceed those which are
4 mandatory for the affected title. Demotional title rights shall be
5 determined by the commissioner based upon the same criteria,
6 except that the demotional title shall have lower but substantially
7 similar duties and responsibilities as the affected title.

8 f. In State service, a permanent employee in a position affected
9 by a layoff action shall be provided with applicable lateral and
10 demotional title rights first, at the employee's option, within the
11 municipality in which the facility or office is located and then to the
12 job locations selected by the employee within the department or
13 autonomous agency. The employee shall select individual job
14 locations in preferential order from the list of all job locations and
15 shall indicate job locations at which the employee will accept lateral
16 and demotional title rights. In local service, a permanent employee
17 in a position affected by a layoff action shall be provided lateral and
18 demotional title rights within the layoff unit.

19 g. Following the employee's selection of job location
20 preferences, lateral and demotional title rights shall be provided in
21 the following order:

22 (1) a vacant position that the appointing authority has previously
23 indicated it is willing to fill;

24 (2) a position held by a provisional employee who does not have
25 permanent status in another title, and if there are multiple
26 employees at a job location, the specific position shall be
27 determined by the appointing authority;

28 (3) a position held by a provisional employee who has
29 permanent status in another title, and if there are multiple
30 provisional employees at a job location, the specific position shall
31 be determined based on level of the permanent title held and
32 seniority;

33 (4) the position held by the employee serving in a working test
34 period with the least seniority;

35 (5) in State service, and in local jurisdictions having a
36 performance evaluation program approved by the department, the
37 position held by the permanent employee whose performance rating
38 within the most recent 12 months in the employee's permanent title
39 was significantly below standards or an equivalent rating;

40 (6) in State service, and in local jurisdictions having a
41 performance evaluation program approved by the department, the
42 position held by the permanent employee whose performance rating
43 within the most recent 12 months in the employee's permanent title
44 was marginally below standards or an equivalent rating; and

45 (7) the position held by the permanent employee with the least
46 seniority.

47 h. A permanent employee shall be granted special
48 reemployment rights based on the employee's permanent title at the

1 time of the layoff action and the employee shall be certified for
2 reappointment after the layoff action to the same, lateral and lower
3 related titles. Special reemployment rights shall be determined by
4 the commissioner in the same manner as lateral and demotional
5 rights.

6 i. Notwithstanding the provisions above, at no time shall any
7 person on a military leave of absence for active service in the
8 Armed Forces of the United States in time of war or emergency be
9 laid off. '【Such person shall not be entitled to layoff protection if
10 the person voluntarily continues military service beyond the time
11 when he can be released from the service.】'

12 (cf: P.L.2001, c.241, s.1)

13

14 4. This act shall take effect immediately.